

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

UNITED STATES OF AMERICA,

Plaintiff,

v.

JAY AND KATHLEEN JACKSON, and
JACKSON SERVICES, INC.,

Defendants.

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) Civil Action No. 8:04cv64
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CONSENT DECREE

I. BACKGROUND

A. The United States of America ("United States"), on behalf of the Administrator of the United States Environmental Protection Agency ("EPA"), filed a complaint in this matter pursuant to Sections 106 and 107 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. §§ 9606 and 9607, as amended ("CERCLA"), seeking injunctive relief and reimbursement of response costs incurred and to be incurred for response actions taken at or in connection with the release or threatened release of hazardous substances at the 10th Street Superfund Site (formerly known as the Columbus, Nebraska Public Water Supply Superfund Site) in Columbus, Nebraska ("the Site").

B. The defendants who have entered into this Consent Decree ("Defendants") do not admit any liability to Plaintiff arising out of the transactions or occurrences alleged in the

complaint.

C. The United States and Defendants agree, and this Court by entering this Consent Decree finds, that this Consent Decree has been negotiated by the Parties in good faith, that settlement of this matter will avoid prolonged and complicated litigation between the Parties, and that this Consent Decree is fair, reasonable, and in the public interest.

THEREFORE, with the consent of the Parties to this Decree, it is ORDERED,
ADJUDGED, AND DECREED:

II. JURISDICTION

1. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 and 1345 and 42 U.S.C. §§ 9606, 9607 and 9613(b) and also has personal jurisdiction over Defendants. Solely for the purposes of this Consent Decree and the underlying complaint, settling Defendants waive all objections and defenses that they may have to jurisdiction of the Court or to venue in this District. Defendants consent to and shall not challenge entry of this Consent Decree or this Court's jurisdiction to enter and enforce this Consent Decree.

III. PARTIES BOUND

2. This Consent Decree is binding upon the United States, and upon Defendants and their heirs, successors and assigns. Any change in ownership or corporate or other legal status, including but not limited to, any transfer of assets or real or personal property, shall in no way alter the status or responsibilities of Defendants under this Consent Decree. Within 30 days of any change in ownership or corporate or other legal status, Defendants shall provide the United States with notice of the change, in accordance with Section XVI (Notices and Submissions) of this Decree.

IV. DEFINITIONS

3. Unless otherwise expressly provided herein, terms used in this Consent Decree which are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in CERCLA or in such regulations. Whenever terms listed below are used in this Consent Decree or in any appendix attached hereto, the following definitions shall apply:

- a. "CERCLA" shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. § 9601, et seq.
- b. "Consent Decree" or "Decree" shall mean this Consent Decree and all appendices attached hereto. In the event of conflict between this Consent Decree and any appendix, the Consent Decree shall control.
- c. "Day" shall mean a calendar day. In computing any period of time under this Consent Decree, where the last day would fall on a Saturday, Sunday, or federal holiday, the period shall run until the close of business of the next working day.
- d. "Defendants" and "Settling Defendants" shall mean Jay J. Jackson, Kathleen M. Jackson and Jackson Services, Inc.
- e. "DOJ" shall mean the United States Department of Justice and any successor departments, agencies or instrumentalities of the United States.
- f. "EPA" shall mean the United States Environmental Protection Agency and any successor departments, agencies or instrumentalities of the United States.
- g. "EPA Hazardous Substance Superfund" shall mean the Hazardous Substance Superfund established by the Internal Revenue Code, 26 U.S.C. § 9507.
- h. The "Final Record of Decision for OU2" or "Final OU2 ROD" means the

"Final Record of Decision for OU2" relating to the Site signed on September 29, 2005 by the Regional Administrator, EPA Region 7, or his/her delegatee, and all attachments thereto.

i. "Interest" shall mean interest at the current rate specified for interest on investments of the Hazardous Substance Superfund established by 26 U.S.C. § 9507, compounded annually on October 1 of each year, in accordance with 42 U.S.C. § 9607(a). The applicable rate of interest shall be the rate in effect at the time the interest accrues. The rate of interest is subject to change on October 1 of each year.

j. The "Interim Record of Decision for OU2" or "Interim OU2 ROD" means the EPA "Interim Record of Decision for OU2" relating to the Site signed on September 20, 2001 by the Regional Administrator, EPA Region 7, or his/her delegatee, and all attachments thereto.

k. "Owner settling defendant" shall mean Jackson Services, Inc.

l. "Paragraph" shall mean a portion of this Consent Decree identified by an arabic numeral or an upper or lower case letter.

m. "Parties" shall mean the United States and the Defendants.

n. "Plaintiff" shall mean the United States.

o. "Property" shall mean that portion of the Site that is owned by Owner Settling Defendants as of March 1, 2006. The Property is located at 960 24th Avenue in Columbus, Platte County, Nebraska, and is designated by the following property description: Lot Eight (8) and the East 50 feet of Lot Seven (7), in Block One Hundred Twenty-Eight (128) of the Original City of Columbus, Platte County, Nebraska.

p. "Record of Decision for OU1" or "OU1 ROD" shall mean the EPA Record of

Decision relating to the Site signed on February 23, 1995 by the Regional Administrator, EPA Region 7, or his/her delegatee, and all attachments thereto.

q. "Remedial Action" shall mean those activities, except for Operation and Maintenance, to be undertaken to implement the OU1 ROD, the Interim OU2 ROD, or the Final OU2 ROD.

r. "Section" shall mean a portion of this Consent Decree identified by a roman numeral.

s. "Site" shall mean the 10th Street Superfund Site, encompassing a contaminant plume, approximately 430 acres in size, located between 23rd and 6th Streets from north to south and between 18th Avenue and 31st Avenue from east to west in Columbus, Platte County, Nebraska, and depicted more clearly on the maps included in Appendix A.

t. "United States" shall mean the United States of America, including its departments, agencies and instrumentalities.

V. STATEMENT OF PURPOSE

4. By entering into this Consent Decree, the mutual objective of the Parties is for Settling Defendants to make a cash payment in accordance with Section VI (Reimbursement of Response Costs) in order to address their alleged liability for the Site as provided in Section VIII (Covenant Not to Sue by Plaintiffs) and subject to Section IX (Reservations of Rights by the United States).

VI. REIMBURSEMENT OF RESPONSE COSTS

5. Within 30 days of entry of the Consent Decree Defendants shall pay to the United States and EPA the amount of \$700,000.00.

a. Payment shall be made by FedWire Electronic Funds Transfer ("EFT") to the U.S. Department of Justice account in accordance with current EFT procedures, referencing USAO File Number _____, EPA Region 7, and Site Spill ID Number 07CS OU1, and DOJ Case Number 90-11-2-07430. Payment shall be made in accordance with instructions provided to Settling Defendant by the Financial Litigation Unit of the U.S. Attorney's Office in the District of Nebraska following lodging of the Consent Decree. Any payments received by the Department of Justice after 4:00 pm Eastern Time shall be credited on the next business day.

b. At the time of payment, Defendants shall send notice that payment has been made to EPA and DOJ in accordance with Section XVI (Notices and Submissions) and to Linda Long, Regional Financial Management Officer, Office of Policy and Management, Resources & Financial Management Branch, U.S. Environmental Protection Agency, 901 North 5th Street, Kansas City, KS, 66101. Such notice shall reference the EPA Region and Site-Spill ID number 07CS OU1 and the Civil Action Number 8:04CV64 (District of Nebraska).

c. All amounts paid pursuant to this paragraph shall be deposited in the 10th Street Superfund Site Special Account within the EPA Hazardous Substance Superfund to be retained and used to conduct or finance response actions at or in connection with the Site, or to be transferred by EPA to the EPA Hazardous Substance Superfund.

VII. FAILURE TO COMPLY WITH REQUIREMENTS OF CONSENT DECREE

6. Interest on Late Payments. In the event that any payment required by Section VI (Reimbursement of Response Costs) or Section VII, Paragraph 7 (Failure to Comply with Requirements of Consent Decree), is not received when due, Interest shall continue to accrue on the unpaid balance through the date of payment.

7. Stipulated Penalties.

a. If any amounts due to EPA under this Consent Decree are not paid by the required date, Defendants shall pay to EPA, as a stipulated penalty, in addition to the Interest required by Paragraph 6, \$100 per violation per day that such payment is late.

b. If Defendants do not comply with Section XII (Site Access/Institutional Controls), Defendants shall pay to EPA, as a stipulated penalty, \$100 per violation per day of such noncompliance.

c. Stipulated penalties are due and payable within 30 days of the date of the demand for payment of the penalties by EPA. All payments to EPA under this Paragraph shall be made by certified or cashier's check made payable to "EPA Hazardous Substance Superfund" and shall be sent to:

Mellon Bank
EPA Region 7
Hazardous Substance Response Fund
P.O. Box 360748M
Pittsburgh, PA 15251

All payments shall indicate that the payment is for stipulated penalties and shall reference the name and address of the party making payment, the EPA Region and Site Spill ID Number 07CS OU1, USAO File Number **DOJ2002v00382**, and DOJ Case Number 90-11-2-07430 and the Civil Action Number 8:04CV64 (District of Nebraska). Copies of checks paid pursuant to this Paragraph, and any accompanying transmittal letters, shall be sent to EPA and DOJ as provided in Section XVI (Notices and Submissions) and to Linda Long, Regional Financial Management Officer, Office of Policy and Management, Resources & Financial Management Branch, U.S. Environmental Protection Agency, 901 North 5th Street, Kansas City, KS, 66101.

d. Penalties shall accrue as provided in this Paragraph regardless of whether EPA has notified Defendants of the violation or made a demand for payment, but need only be paid upon demand. All penalties shall begin to accrue on the day after complete performance is due or the day a violation occurs, and shall continue to accrue through the final day of correction of the noncompliance or completion of the activity. Nothing herein shall prevent the simultaneous accrual of separate penalties for separate violations of this Consent Decree.

8. If the United States brings an action to enforce this Consent Decree, Defendants shall reimburse the United States for all costs of such action, including but not limited to costs of attorney time.

9. Payments made under Paragraphs 6,7 and 8 shall be in addition to any other remedies or sanctions available to Plaintiff by virtue of Defendants' failure to comply with the requirements of this Consent Decree.

10. The obligations of Defendants to pay amounts owed the United States under this Consent Decree are joint and several. In the event of the failure of any one or more Defendants to make the payments required under this Consent Decree, the remaining Defendants shall be responsible for such payments.

11. Notwithstanding any other provision of this Section, the United States may, in its unreviewable discretion, waive payment of any portion of the stipulated penalties that have accrued pursuant to this Consent Decree.

VIII. COVENANT NOT TO SUE BY PLAINTIFF

12. Except as specifically provided in Section IX (Reservation of Rights by the United States), the United States covenants not to sue or to take administrative action against Defendants

pursuant to Sections 106 or 107(a) of CERCLA, 42 U.S.C. §§ 9606 or 9607(a), with regard to the Site. This covenant shall take effect upon receipt by EPA of all payments required by Section VI (Reimbursement of Response Costs) and any amount due under Section VII (Failure to Comply with Requirements of Consent Decree) and receipt by EPA of the certified copy of the original recorded easement in accordance with Section XII (Site Access/Institutional Controls) of this Consent Decree. This covenant not to sue extends only to Settling Defendants and does not extend to any other person. This covenant not to sue is conditioned upon the satisfactory performance by Defendants of their obligations under this Consent Decree.

IX. RESERVATION OF RIGHTS BY THE UNITED STATES

13. The covenant not to sue set forth in Section VIII (Covenant Not To Sue by Plaintiff) does not pertain to any matters other than those expressly specified therein. The United States reserves, and this Consent Decree is without prejudice to, all rights against Defendants with respect to all other matters, including but not limited to:

- a. liability for failure of Defendants to meet a requirement of this Consent Decree;
- b. liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments;
- c. criminal liability;
- d. liability, based upon Defendants' ownership or operation of the Site, or upon Defendants' transportation, treatment, storage, or disposal, or the arrangement for the transportation, treatment, storage, or disposal, of a hazardous substance or a solid waste at or in connection with the Site, after the effective date of this Consent Decree; and

e. liability arising from the past, present, or future disposal, release or threat of release of a hazardous substance, pollutant, or contaminant outside of the Site.

14. United States Pre-Certification Reservations. Notwithstanding any other provision of this Consent Decree, the United States reserves, and this Consent Decree is without prejudice to, the right to institute proceedings in this action or in a new action, or to issue an administrative order seeking to compel Settling Defendants (1) to perform response actions relating to the Site or (2) to reimburse the United States for additional costs of response if, prior to Certification of Completion of the remedial action selected in the Final OU2 ROD:

- (i) conditions at the Property, previously unknown to EPA, are discovered, or
- (ii) information concerning the Property, previously unknown to EPA, is received, in whole or in part,

and EPA determines that these previously unknown conditions or information together with any other relevant information indicates that the Remedial Action is not protective of human health or the environment.

15. United States Post-Certification Reservations. Notwithstanding any other provision of this Consent Decree, the United States reserves, and this Consent Decree is without prejudice to, the right to institute proceedings in this action or in a new action, or to issue an administrative order seeking to compel Settling Defendants (1) to perform response actions relating to the Site or (2) to reimburse the United States for additional costs of response if, subsequent to Certification of Completion of the remedial action selected in the Final OU2 ROD:

- (i) conditions at the Property, previously unknown to EPA, are discovered, or
- (ii) information concerning the Property, previously unknown to EPA, is

received, in whole or in part,
and EPA determines that these previously unknown conditions or information together with any other relevant information indicates that the Remedial Action is not protective of human health or the environment.

16. For purposes of Paragraph 14, the information and the conditions known to EPA shall include only that information and those conditions known to EPA as of the date the Final OU2 ROD was signed and set forth in the Final OU2 ROD and the administrative record supporting the Final OU2 ROD. For purposes of Paragraph 15, the information and the conditions known to EPA shall include only that information and those conditions known to EPA as of the date of Certification of Completion of the remedial action selected in the Final OU2 ROD, the administrative record supporting the Final OU2 ROD, and the post-Final OU2 ROD administrative record.

17. As soon as reasonably practicable after such a certification is possible, EPA will certify in writing that the remedial action selected in the Final OU2 ROD has been performed fully and that the performance standards have been attained. This certification shall constitute the Certification of Completion of the remedial action selected in the OU2 ROD for purposes of Paragraphs 14, 15, and 16, above.

X. COVENANT NOT TO SUE BY DEFENDANTS

18. Defendants covenant not to sue and agree not to assert any claims or causes of action against the United States, or its contractors or employees, with respect to the Site or this Consent Decree, including but not limited to:

- a. any direct or indirect claim for reimbursement from the Hazardous Substance

Superfund based on Sections 106(b)(2), 107, 111, 112, or 113 of CERCLA, 42 U.S.C.

§§ 9606(b)(2), 9607, 9611, 9612, or 9613, or any other provision of law;

b. any claim arising out of response actions at or in connection with the Site, including any claim under the United States Constitution, the Nebraska Constitution, the Tucker Act, 28 U.S.C. § 1491, the Equal Access to Justice Act, 28 U.S.C. § 2412, as amended, or at common law; and

c. any claim against the United States pursuant to Sections 107 and 113 of CERCLA, 42 U.S.C. §§ 9607 and 9613, relating to the Site.

19. Nothing in this Consent Decree shall be deemed to constitute approval or preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. 300.700(d).

20. Defendants agree not to assert any CERCLA claims or causes of action that they may have for all matters relating to the Site, including for contribution, against any other person that enters into a final settlement with EPA with respect to the Site. This waiver shall not apply with respect to any defense, claim, or cause of action that Defendants may have against any person if such person asserts a claim or cause of action relating to the Site against Defendants.

XI. EFFECT OF SETTLEMENT/CONTRIBUTION PROTECTION

21. Except as provided in Paragraph 20, nothing in this Consent Decree shall be construed to create any rights in, or grant any cause of action to, any person not a Party to this Consent Decree. The preceding sentence shall not be construed to waive or nullify any rights that any person not a signatory to this Decree may have under applicable law. Except as provided in Paragraph 20, the Parties expressly reserve any and all rights (including, but not

limited to, any right to contribution), defenses, claims, demands, and causes of action which they may have with respect to any matter, transaction, or occurrence relating in any way to the Site against any person not a Party hereto.

22. The Parties agree, and by entering this Consent Decree this Court finds, that Defendants are entitled, as of the date of entry of this Consent Decree, to protection from contribution actions or claims as provided by Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2), for “matters addressed” in this Consent Decree. The “matters addressed” in this Consent Decree are all response actions taken or to be taken and all response costs incurred or to be incurred, at or in connection with the Site, by the United States or any other person. The “matters addressed” in this Consent Decree do not include those response costs or response actions as to which the United States has reserved its rights under this Consent Decree (except for claims for failure to comply with this Decree), in the event that the United States asserts rights against Defendants coming within the scope of such reservations.

23. Each Defendant agrees that, with respect to any suit or claim for contribution brought by it for matters related to this Consent Decree, it will notify EPA and DOJ in writing no later than 60 days prior to the initiation of such suit or claim. Each Defendant also agrees that, with respect to any suit or claim for contribution brought against it for matters related to this Consent Decree, it will notify EPA and DOJ in writing within 10 days of service of the complaint or claim upon it. In addition, each Defendant shall notify EPA and DOJ within 10 days of service or receipt of any Motion for Summary Judgment, and within 10 days of receipt of any order from a court setting a case for trial, for matters related to this Consent Decree.

24. In any subsequent administrative or judicial proceeding initiated by the United States

for injunctive relief, recovery of response costs, or other relief relating to the Site, Defendants shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by the United States in the subsequent proceeding were or should have been brought in the instant case; provided, however, that nothing in this Paragraph affects the enforceability of the Covenant Not to Sue by Plaintiff set forth in Section VII.

XII. SITE ACCESS/INSTITUTIONAL CONTROLS

25. Commencing on the date of lodging of this Consent Decree, Owner Settling Defendant agrees to provide the United States and its representatives, including EPA and its contractors, access at all reasonable times to the Site and to any other property owned or controlled by Defendants to which access is determined by EPA to be required for the implementation of this Consent Decree, or for the purpose of conducting any response activity related to the Site, including but not limited to:

- a. Monitoring of investigation, removal, remedial or other activities at the Site;
- b. Verifying any data or information submitted to the United States;
- c. Conducting investigations relating to contamination at or near the Site;
- d. Obtaining samples;
- e. Assessing the need for, planning, or implementing response actions at or near the Site;
- f. Assessing Defendants' compliance with this Consent Decree; and
- g. Determining whether the Site or other property is being used in a manner that is prohibited or restricted, or that may need to be prohibited or restricted, by or pursuant to this

Decree.

26. Commencing on the date of lodging of this Consent Decree, Owner Settling Defendant shall refrain from using the Site, or other property where access and/or land/water use restrictions are needed to implement this Consent Decree, in any manner that would interfere with or adversely affect the implementation, integrity, or protectiveness of the remedial measures to be performed at the Site. Such restrictions include, but are not limited to, the following: the construction or installation of any new water wells on the Property (other than groundwater monitoring wells or remediation wells) shall be prohibited; any existing water wells on the Property (other than groundwater monitoring wells) must be abandoned, and such abandonment must be in accordance with State of Nebraska regulations; any excavation, drilling, or similar intrusive activity which would disturb or interfere with any soil or groundwater contamination on the Property (other than installation of groundwater monitoring wells or remediation wells) shall be prohibited; the Property or any portion thereof shall not be used for any use other than industrial or commercial use, excluding child care facilities, which shall be prohibited; soils located on the Property shall not be excavated without prior written approval of EPA or the Nebraska Department of Environmental Quality, except for minor excavations necessary to install, maintain or repair utility poles, fence posts, sidewalks, paving, and other comparable activities, as well as minor excavations necessary to maintain or repair existing underground utilities and minor excavations in connection with landscaping activities; any excavations shall be conducted in accordance with worker protection and soil disposal requirements as may be required by applicable laws and requirements; and neither PCE or TCE or any substance containing PCE or TCE shall be used or stored on the Property at any time.

27. Owner Settling Defendant shall execute and record in the Platte County Register of Deeds Office, 2610 14th Street, Columbus, Nebraska, 68601, an easement, running with the land, that (i) grants a right of access for the purpose of conducting any activity related to this Consent Decree including, but not limited to, those activities listed in Paragraph 25 of this Consent Decree, and (ii) grants the right to enforce the land/water use restrictions listed in Paragraph 26 of this Consent Decree, or other restrictions that EPA determines are necessary to implement, ensure non-interference with, or ensure the protectiveness of the remedial measures to be performed at the Site. Defendants shall grant access rights and the rights to enforce the land/water use restrictions to an appropriate grantee or grantees, as determined by EPA. Defendants shall, within 45 days of entry of this Consent Decree, submit to EPA for review and approval with respect to such property:

a. A draft easement, in substantially the form attached hereto as Appendix B, that is enforceable under the laws of the State of Nebraska, and

b. a current title insurance commitment or report prepared in accordance with the U.S. Department of Justice Standards for the Preparation of Title Evidence in Land Acquisitions by the United States (1970) (the "Standards") which shows title to the land described in the easement to be free and clear of all prior liens and encumbrances (except when those liens or encumbrances are approved by EPA).

Within 15 days of EPA's approval and acceptance of the easement and the title evidence, Defendants shall update the title search and, if it is determined that nothing has occurred since the effective date of the commitment to affect the title adversely, record the easement with the Platte County Register of Deeds Office, 2610 14th Street, Columbus, Nebraska, 68601. Within

30 days of recording the easement, Defendants shall provide EPA with a final title insurance policy, or other final evidence of title acceptable to EPA, and a certified copy of the original recorded easement showing the clerk's recording stamps. If the easement is to be conveyed to the United States, the easement and title evidence (including final title evidence) shall be prepared in accordance with the U.S. Department of Justice Title Standards 2001, and approval of the sufficiency of title must be obtained as required by 40 U.S.C. § 255.

28. If Defendants are unable to obtain an agreement from the holder of a prior lien or encumbrance to release or subordinate such lien or encumbrance to the easement being created pursuant to this consent decree within 45 days of the date of entry of this Consent Decree, Defendants shall promptly notify the United States in writing, and shall include in that notification a summary of the steps that Defendants have taken to attempt to comply with Paragraph 27 of this Consent Decree. The United States may, as it deems appropriate, assist Defendants in obtaining access or land/water use restrictions, either in the form of contractual agreements or in the form of easements running with the land, or in obtaining the release or subordination of a prior lien or encumbrance. Defendants shall reimburse the United States in accordance with the procedures in Section VI (Reimbursement of Response Costs), for all costs incurred, direct or indirect, by the United States in obtaining such access, land/water use restrictions, and/or the release or subordination of prior liens or encumbrances including, but not limited to, the cost of attorney time and the amount of monetary consideration paid or just compensation.

29. If EPA determines that land/water use restrictions in the form of state or local laws, regulations, ordinances or other governmental controls are needed to implement the remedy

selected in the OU1 ROD, the Interim OU2 ROD, or the Final OU2 ROD ensure the integrity and protectiveness thereof, or ensure non-interference therewith, Defendants shall cooperate with EPA's efforts to secure such governmental controls.

30. Notwithstanding any provision of this Consent Decree, the United States retains all of its access authorities and rights, as well as all of its rights to require land/water use restrictions, including enforcement authorities related thereto, under CERCLA, the Resource Conservation and Recovery Act, 42 U.S.C. § 6927, and any other applicable statute or regulations.

31. Notice of Obligations to Successors-in-Title.

a. Within 15 days after entry of this Consent Decree, Owner Settling Defendant shall record a notice of the entry of this Consent Decree with the Platte County Register of Deeds Office, 2610 14th Street, Columbus, Nebraska, 68601. Thereafter, each deed, title, or other instrument conveying an interest in the property included in the Site shall contain a notice stating that the property is subject to this Consent Decree and shall reference this action's name, docket number, and Court in which this Consent Decree is entered, and any restrictions applicable to the property under this Consent Decree.

b. The obligations of each Defendant with respect to the provision of access and the implementation of institutional controls under this Section shall be binding upon any and all Defendants and upon any and all persons who subsequently acquire any such interest or portion thereof (hereinafter "Successors-in-Title"). Within 15 days after the entry of this Consent Decree, the Owner Settling Defendant shall record at the Platte County Register of Deeds Office, 2610 14th Street, Columbus, Nebraska, 68601, a notice of obligation to provide access under this Section (Site Access/Institutional Controls) and related covenants, if any. Each subsequent

instrument conveying an interest to any such property included in the Site shall reference the recorded location of such notice and covenants applicable to the property.

c. The Owner Settling Defendant and any Successor-in-Title shall, at least 30 days prior to the conveyance of any such interest, give written notice of this Consent Decree to the grantee and written notice to EPA of the proposed conveyance, including the name and address of the grantee, and the date on which notice of the Consent Decree was given to the grantee. In the event of any such conveyance, the Defendants' obligations under this Consent Decree, including their obligation to provide or secure access pursuant to this Section (Site Access/Institutional Controls), shall continue to be met by Defendants. In no event shall the conveyance of an interest in property that includes, or is a portion of, the Site release or otherwise affect the liability of Defendants to comply with this Consent Decree.

XIII. CERTIFICATION

32. By signing this Consent Decree, each Defendant certifies individually that, to the best of his or her knowledge and belief, he or she has:

a. conducted a thorough, comprehensive, good faith search for records, and has fully and accurately disclosed to EPA, all information currently in its possession, or in the possession of its officers, directors, employees, contractors or agents, which relates in any way to the ownership, operation or control of the Site, or to the ownership, possession, generation, treatment, transportation, storage or disposal of a hazardous substance, pollutant or contaminant at or in connection with the Site;

b. not altered, mutilated, discarded, destroyed or otherwise disposed of any records relating to its potential liability regarding the Site, after notification of potential liability or the

filing of a suit against the Defendant regarding the Site; and

c. fully complied with any and all EPA requests for information regarding the Site and Defendants' financial circumstances pursuant to Sections 104(e) and 122(e) of CERCLA, 42 U.S.C. §§ 9604(e) and 9622(e), and Section 3007 of the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. § 6927; and

XIV. MODIFICATIONS

33. This Consent Decree may be modified by mutual agreement of the Parties. Any such amendment shall be in writing and shall be signed by an authorized representative of the Parties. Unless otherwise provided in the amendment, the effective date of any such modification shall be the date on which the written modification or agreement is signed by EPA after signature of the Defendants' authorized representative. All modifications shall be incorporated into and become a part of this Consent Decree.

XV. NOTICES AND SUBMISSIONS

34. Whenever, under the terms of this Consent Decree, notice is required to be given or a document is required to be sent by one party to another, it shall be directed to the individuals at the addresses specified below, unless those individuals or their successors give notice of a change to the other Parties in writing. Written notice as specified herein shall constitute complete satisfaction of any written notice requirement of the Consent Decree with respect to the United States, EPA, DOJ, and Defendants, respectively.

As to the United States:

As to DOJ:

Chief, Environmental Enforcement Section

U.S. v. Jay and Kathleen Jackson, et al.
Consent Decree

Environment and Natural Resources Division
U.S. Department of Justice (DJ # 90-11-2-07430)
P.O. Box 7611
Washington, D.C. 20044-7611

As to EPA:

Gerhardt Braeckel
Assistant Regional Counsel
Office of Regional Counsel
U.S. Environmental Protection Agency, Region VII
901 N. 5th Street
Kansas City, KS 66101

Nancy Johnson Swyers
Remedial Project Manager
Iowa-Nebraska Remedial Branch
Superfund Division
U.S. Environmental Protection Agency, Region VII
901 N. 5th Street
Kansas City, KS 66101

As to Defendants:

Jay J. Jackson
Jackson Services, Inc.
Columbus, NE

XVI. RETENTION OF JURISDICTION

35. This Court shall retain jurisdiction over this matter for the purpose of interpreting and enforcing the terms of this Consent Decree.

XVII. INTEGRATION/APPENDICES

36. This Consent Decree constitutes the final, complete and exclusive agreement and understanding among the Parties with respect to the settlement embodied in this Consent Decree.

The Parties acknowledge that there are no representations, agreements or understandings relating

to the settlement other than those expressly contained in this Consent Decree. The following appendices are attached to and incorporated into this Consent Decree: Appendix A is the map of the Site; and Appendix B is a draft easement.

XVIII. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT

37. This Consent Decree shall be lodged with the Court for a period of not less than 30 days for public notice and comment. The United States reserves the right to withdraw or withhold its consent if the comments regarding the Consent Decree disclose facts or considerations which indicate that this Consent Decree is inappropriate, improper, or inadequate. Defendants consent to the entry of this Consent Decree without further notice.

38. If for any reason this Court should decline to approve this Consent Decree in the form presented, this agreement is voidable at the sole discretion of any party and the terms of the agreement may not be used as evidence in any litigation between the Parties.

XIX. EFFECTIVE DATE

39. The effective date of this Consent Decree shall be the date upon which it is entered by the Court.

XX. SIGNATORIES/SERVICE

40. Each undersigned representative of Defendants to this Consent Decree and the Deputy Section Chief of the Environmental Enforcement Section of the Environment and Natural Resources Division of the U.S. Department of Justice certifies that he or she is authorized to enter into the terms and conditions of this Consent Decree and to execute and bind legally such Party to this document.

41. Each Defendant hereby agrees not to oppose entry of this Consent Decree by this Court or to challenge any provision of this Consent Decree, unless the United States has notified

Defendants in writing that it no longer supports entry of the Consent Decree.

42. Each Defendant shall identify, on the attached signature page, the name and address of an agent who is authorized to accept service of process by mail on behalf of that Party with respect to all matters arising under or relating to this Consent Decree. Defendants hereby agree to accept service in that manner and to waive the formal service requirements set forth in Rule 4 of the Federal Rules of Civil Procedure and any applicable local rules of this Court, including but not limited to, service of a summons. The Parties agree that Defendants need not file an answer to the complaint in this action unless or until the Court expressly declines to enter this Consent Decree.

XXI. FINAL JUDGMENT

43. Upon approval and entry of this Consent Decree by the Court, this Consent Decree shall constitute the final judgment between the United States and Defendants. The Court finds that there is no just reason for delay and therefore enters this judgment as a final judgment under Fed. R. Civ. P. 54 and 58.

44. Upon execution of this document, the original Consent Decree shall be returned to the United States Attorney's Office and a copy of the Consent Decree shall be maintained in the Clerk's Office.


SO ORDERED THIS _____ DAY OF _____.

United States District Judge

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of United States v.
Jay J. Jackson, Kathleen M. Jackson and Jackson Services, Inc., relating to the 10th Street
Superfund Site.

FOR THE UNITED STATES OF AMERICA

Date: _____


SUE ELLEN WOOLDRIDGE
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United States Department of Justice
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Telephone: 202-514-1447
Fax: 202-514-0097

Date: _____

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MICHAEL G. HEAVICAN
United States Attorney
District of Nebraska

Date: _____

By: _____

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Telephone: 402-661-3700, Fax: 402-661-3081

Date: _____

CECILIA TAPIA
Acting Director, Superfund Division
U.S. Environmental Protection Agency
901 N. 5th Street
Kansas City, KS 66101

Date: _____

GERHARDT BRAECKEL
Assistant Regional Counsel
U.S. Environmental Protection Agency
901 N. 5th Street
Kansas City, KS 66101
(913) 551-7471

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of United States v.

Jay J. Jackson, Kathleen M. Jackson and Jackson Services, Inc., relating to the 10th Street

Superfund Site.

FOR DEFENDANTS JAY J. JACKSON,
KATHLEEN M. JACKSON, and JACKSON
SERVICES, INC.

Date: _____

ELLEN GOLDMAN

Date: _____

JAY J. JACKSON

Columbus, NE 68601

Date: _____

KATHLEEN M. JACKSON

Columbus, NE 68601

Date: _____

JACKSON SERVICES, INC.

Columbus, NE 68601

Agent Authorized to Accept Service on Behalf of Above-signed Parties:

Name: _____

Title: _____

Address: _____

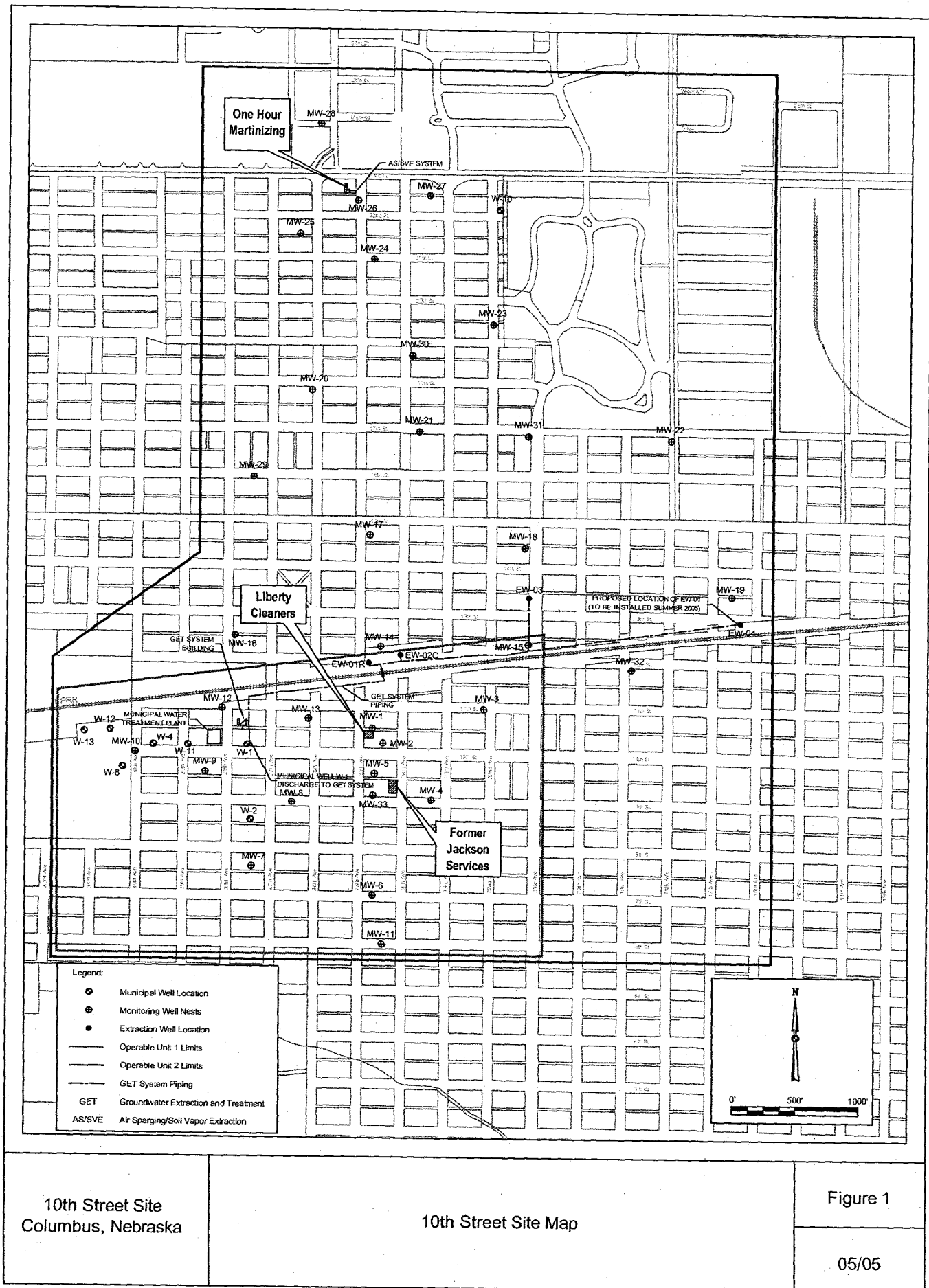


Figure 1

05/05